

30 N. Third Street

Suite 300

P.O. Box 1169

Harrisburg, PA

17108-1169

Phone  
717-238-8311

Fax  
717-238-5352

Internet  
www.patel.org

E-mail  
info@patel.org

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## **BUNDLING REGULATIONS: THE PTA PERSPECTIVE: UPDATE**

### **BACKGROUND**

- On March 26, 2009, the Pennsylvania Public Utility Commission (PUC) adopted a Final Rulemaking Order (Docket No. L-00060179), promulgating a final regulation regarding bundled packages of telecommunications service.
- Chairman Cawley, Vice Chairman Christy and Commissioner Gardner supported the Order, Commissioners Pizzingrilli and Powelson dissented.
- This regulation has a long and rather sordid history, having its genesis in a PUC Proposed Rulemaking Order passed in June 2006 and subsequent rejection by IRRC in May 2007. At that time, the Commission said that the regulation appeared to “regulate bundled service packages as a whole” and challenged the PUC to further explain how the regulation is consistent with Act 183. The PUC re-opened the rulemaking process in June 2008 and received comments from several interested parties, including Verizon, AT&T, PTA and the Office of Consumer Advocate. While the current version of this regulation does make modifications from the original, it still suffers from the fundamental flaw of effectively regulating bundled packages of service in contravention of Act 183. Furthermore, some of the modifications are substantially more burdensome on LECs and less protective of customers.

### **CUSTOMER ISSUES**

- The Final Order eliminates the PUC-approved bundling waiver under which the PTA Member Companies and their customers have been successfully operating for the past decade; which begs the question: What problem is the Commission attempting to solve via its regulation?
- The waivers essentially permit LECs, when a customer fails to pay the single-price bundled package-charge and a written suspension notice is sent to the customer, to discontinue the entire package, provided that the customer is provided with standalone basic service going forward. This avoids the

immediate termination of the customer's basic service. The waivers also require that the LEC must provide certain disclosure statements notifying bundled and potential bundled customers of the consequences of any failure to pay the bundle charge in full.

- By eliminating the current waivers and promulgating §64.14(a)(4), the PUC is actually disadvantaging the bundle customers it seeks to protect by accelerating the period in which the basic service of such customers becomes delinquent.
- Here's how it works: Many companies are billing monthly charges for bundles in the non-basic or toll section of a customer's monthly billing statement, with unpaid balances maintained in those buckets. As customers do not pay, there is decreased threat to a customer being suspended for basic service because non-basic services from the bundle are removed from the account (i.e. features, high-speed Internet, video) and basic service charges are only added at that time for the customer to keep local service. The unpaid balance remains in the original bucket as it was billed. Customers who do not pay basic charges then would be suspended in 60 or more days as the basic bucket increases. If companies are forced to separate basic charges for bundles, then as customers do not pay, unpaid balances for basic will start accruing right away which could result in a customer being suspended for nonpayment 60 days or more sooner than if the bundle charges are billed with balances maintained in the non-basic or toll section.
- Pennsylvania's ILECs have never been more accessible to their customers. Whether it be a simple phone call to a customer service representative, an e-mail or utilizing the company website, ILECs have spent considerable time, effort and money in making the company-customer relationship as seamless and transparent as possible. The PUC requirement that customers must write to their phone company to establish payment arrangements on delinquent accounts is burdensome, costly, and inefficient.

## **STATUTORY ISSUES**

- In its Declaration of Policy, Act 183 states that it is the policy of the Commonwealth to "recognize that the regulatory obligations imposed upon the incumbent local exchange telecommunications companies should be reduced to levels more consistent with those imposed upon competing alternative service providers." The act also specifically provides for the LEC offering of bundled packages by saying "A local exchange

telecommunications company may offer and bill to customers on one bill bundled packages of services which include nontariffed, competitive, noncompetitive or protected services, including services of an affiliate, in combinations and at a single price selected by the company.”

- While the majority at the PUC cites to Section 3019 (b)(2) it does not utilize the entire cite to justify its position, and for good reason. In its entirety, the section reads as follows: “The Commission shall retain the following powers and duties relating to the regulation of all telecommunications carriers and interexchange telecommunication carriers, including the power to seek information necessary to facilitate the exercise of these powers and duties: to review and revise quality of service standards contained in 52 Pa. Code (relating to public utilities) that address the safety, adequacy, reliability and privacy of telecommunications services and the ordering, installation, suspension, termination and restoration of any telecommunications service. (Commission cite ends here). **Any review or revision shall take into consideration the emergence of new industry participants, technological advancements, service standards and consumer demand.**”
- Despite the majority’s protestation to the contrary, the final form regulation continues to regulate bundled packages of service as outlined in the Dissenting Statement of Commissioners Pizzingrilli and Powelson. The statement correctly concludes that the regulation inappropriately mandates how payments are to be applied and subjects the companies’ disclosure statements to PUC review. Both of these actions essentially regulate bundled packages, an initiative which the Commission undertook with the original proposed rulemaking in this matter and was admonished by the Independent Regulatory Review Commission (IRRC) as being inconsistent with Act 183.

## STATUS

- The regulation has not been sent to either the standing committees in the Legislature or to the Independent Regulatory Review Commission for its review.
- Verizon and the Broadband Cable Association have filed Petitions for Reconsideration of the matter with the PUC.

## UPDATE

- In Mid-August the PUC’s Law Bureau contacted the PTA and indicated that it was “re-thinking” the rulemaking and “returning to the original concept of codifying the waivers of Chapter 64”. This is the position that PTA has been espousing since late last year.

- When the new proposed regulation is approved by the Commissioners, it will replace the faulty regulation currently sitting at the Commission and be forwarded to the standing committees in the Legislature and the Independent Regulatory Review Commission.